



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 31 2015

Kathryn E. Biber, Esq.
2500 King Street, #902
San Francisco, CA 94107

RE: MUR 6535
Romney for President, Inc.

Dear Ms. Biber:

On February 29, 2012, the Federal Election Commission notified Romney for President and Darrel Crate in his official capacity as treasurer ("Romney for President") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 16, 2015, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe Romney for President violated 52 U.S.C. § 30116(f). Accordingly, the Commission closed its file in this matter as it pertains to your client. The Factual and Legal Analysis, explaining the Commission's finding is enclosed.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109 (a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Jin Lee, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Blumberg", with a long horizontal line extending to the right.

Peter Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4
5 **RESPONDENT:** Romney for President and **MUR 6535**
6 Darrell Crate in his official capacity as Treasurer
7

8 **I. INTRODUCTION**

9 The Complaint in this matter alleges that Restore Our Future, Inc. ("ROF"), an
10 independent expenditure-only political committee,¹ made a prohibited in-kind contribution to
11 Mitt Romney and his principal campaign committee, Romney for President, Inc. ("Romney for
12 President"), in 2012 by financing the republication of a television advertisement prepared by
13 Romney or his agents. As set forth below, the Commission finds no reason to believe that
14 Romney for President violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting excessive or
15 prohibited in-kind contributions from ROF.

16 **II. FACTUAL BACKGROUND**

17 Mitt Romney was a candidate for President of the United States in 2008 and designated
18 Romney for President as his principal campaign committee. Statement of Candidacy for Mitt
19 Romney (Feb. 13, 2007). Romney for President registered with the Commission on February 13,
20 2007. Statement of Organization (Feb. 13, 2007). Romney was unsuccessful in his 2008
21 presidential bid and withdrew from the race in February 2008. *See* ROF Resp. at 3.

22 On April 11, 2011, Romney filed a statement of candidacy to run for President in 2012,
23 designating his campaign committee formed in 2007 — Romney for President — as his
24 "principal committee" and renaming it "Romney for President Exploratory Committee." *See*

¹ ROF has not established a separate account for contributions subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act"). *See* Stipulated Order and Consent Judgment in *Carey v. FEC*, No. 11-259-RMC (Aug. 19, 2011); *see also* FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <http://www.fec.gov/press/Press2011/20111006postcarey.shtml>.

1 Letter from Mitt Romney to FEC (Apr. 11, 2011). On June 2, 2011, following Romney's formal
2 public announcement that he would seek the office of President, the Committee again changed
3 its name — reverting back to "Romney for President." Amended Statement of Organization
4 (Jun. 2, 2011).

5 The Complaint references an article in *Politico* reporting on an ROF ad called "Saved,"
6 which highlighted Romney's efforts in 1996 to help track down the daughter of a Bain Capital
7 colleague, Robert Gay. Complaint at 2-3. Gay narrates the 30-second video as follows:

8 My fourteen year old daughter had disappeared in New York City for
9 three days. No one could find her. My business partner stepped forward
10 to take charge. He closed the company and brought almost all our
11 employees to New York. He said "I don't care how long it takes, we're
12 going to find her." He set up a command center and searched through the
13 night. The man who helped save my daughter was Mitt Romney. Mitt's
14 done a lot of things that people say are nearly impossible. But, for me, the
15 most important thing he's ever done is to help save my daughter.

16
17 Emily Schultheis, *Pro-Romney Super PAC Runs Footage From Romney '07 Ad*,
18 POLITICO, Feb. 23, 2012. A female voice at end of the ad says "Restore Our Future is
19 responsible for the content of this message," along with the text "PAID FOR BY
20 RESTORE OUR FUTURE, INC., WHICH IS RESPONSIBLE FOR THE CONTENT
21 OF THIS MESSAGE. NOT AUTHORIZED BY ANY CANDIDATE OR
22 CANDIDATE'S COMMITTEE. WWW.RESTOREOURFUTURE.COM." Compl. at 3;
23 Pro-Romney Super PAC Runs Footage from Romney '07 Ad, POLITICO, Feb. 23, 2012.
24 According to the *Politico* article cited by the Complaint, the "Saved" ad aired in February
25 2012 in advance of the Arizona and Michigan primaries, which both occurred on
26 February 28, 2012. See Compl. at 2.

27 The Complaint alleges that the "Saved" ad "appear[s] identical" to an ad run in 2007 by
28 the Romney campaign called "The Search," except for the "final frame" containing the

1 disclaimers.² Compl. at 3. “The Search” ad was reportedly aired by the Romney campaign in
2 2007. Compl. at 2, citing Pro-Romney Super PAC Runs Footage from Romney ’07 Ad,
3 POLITICO, Feb. 23, 2012. The ad concludes with Romney stating, “I’m Mitt Romney and I
4 approved this message,” along with the text “PAID FOR BY ROMNEY FOR PRESIDENT,
5 INC. APPROVED BY MITT ROMNEY.” Compl. at 3; Pro-Romney Super PAC Runs
6 Footage from Romney ’07 Ad, POLITICO, Feb. 23, 2012.

7 III. LEGAL ANALYSIS

8 Under the Act, “the financing by any person of the dissemination, distribution, or
9 republication, in whole or in part, of any broadcast or any written, graphic, or other form of
10 campaign materials prepared by the candidate, his campaign committees, or their authorized
11 agents shall be considered to be an expenditure.” 52 U.S.C. §30116(a)(7)(B)(iii). Commission
12 regulations further provide that the republication of campaign materials “prepared by the
13 candidate, the candidate’s authorized committee, or an agent of either of the foregoing” is
14 considered a contribution for purposes of contribution limitations and reporting responsibilities
15 of the person making the expenditure. 11 C.F.R. § 109.23(a). Under Commission regulations,
16 however, the candidate who prepared the materials is not considered to have received an in-kind
17 contribution and is not required to report an expenditure, unless the republication is a
18 coordinated communication under 11 C.F.R. §§ 109.21 or 109.37. *Id.* § 109.23(a).

19 A communication is coordinated with a candidate, a candidate’s authorized committee, or
20 agent of the candidate or committee when the communication satisfies the three-pronged test set
21 forth in 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than that

² In comparing the advertisements, there are two other immaterial differences. First, video of the skyline over New York City during the first few seconds of each ad has been slightly altered; it appears to have been shot from different vantage points. Second, the two ads very briefly display different shots of Romney at approximately the 22-second mark as well as during the last few seconds.

1 candidate or authorized committee; (2) the communication satisfies at least one of the content
2 standards set forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of
3 the conduct standards set forth in 11 C.F.R. § 109.21(d).³

4 **A. Payment**

5 The payment prong of the coordination regulation, 11 C.F.R. § 109.21(a)(1), is satisfied.
6 There is no dispute that ROF paid for the ad.

7 **B. Content**

8 The content prong of the coordination regulation is also satisfied. The content prong is
9 satisfied, *inter alia*, if a communication is an electioneering communication under 11 C.F.R.
10 § 100.29 or a public communication that refers, in relevant part, to a clearly identified
11 Presidential candidate, and is publicly distributed or disseminated in a jurisdiction 120 days
12 before the primary in that jurisdiction, up to and including the day of the general election. *See* 11
13 C.F.R. § 109.21(c).

14 The "Saved" ad identified Presidential candidate Mitt Romney and was reportedly
15 broadcast on television in Michigan and Arizona within a week of the February 28, 2012,
16 primary elections in those states. Thus, the ad qualifies as a public communication referring to a
17 clearly identified candidate distributed within 120 days of a primary election in the relevant
18 jurisdiction. 11 C.F.R. § 109.21(c)(4)(ii). It also appears to qualify as an electioneering
19 communication, as it refers to a clearly identified federal candidate, was broadcast within 30
20 days of a primary election, and the broadcast likely could be received by 50,000 or more persons
21 in a state holding a primary. *See* 11 C.F.R. § 100.29.

³ The Commission's regulations at 11 C.F.R. § 109.21 provide that coordinated communications constitute in-kind contributions from the party paying for such communications to the candidate, the candidate's authorized committee, or the political party committee which coordinates the communication. As an in-kind contribution, the costs of coordinated communications must not exceed a political committee's applicable contribution limits. *See* 52 U.S.C. § 30116.

1 **C. Conduct**

2 The Commission's regulations set forth the following six types of conduct between the
3 payor and the committee, regardless of whether there is an agreement or formal collaboration,
4 that satisfy the conduct prong of the coordination standard: (1) the communication "is created,
5 produced, or distributed at the request or suggestion of a candidate [or an] authorized
6 committee," or if the communication is created, produced, or distributed at the suggestion of the
7 payor, the candidate or authorized committee assents to the suggestion; (2) the candidate, his or
8 her committee, or their agent is materially involved in, *inter alia*, the content, intended audience,
9 or means or mode of communication; (3) the communication is created, produced, or distributed
10 after at least one substantial discussion about the communication between the person paying for
11 the communication, or that person's employees or agents, and the candidate or his or her
12 authorized committee, his or her opponent or opponent's authorized committee, or a political
13 party committee; (4) a common vendor uses or conveys information material to the creation,
14 production or distribution of the communication; and (5) a former employee or independent
15 contractor uses or conveys information material to the creation, production, or distribution of the
16 communication. 11 C.F.R. § 109.21(d)(1)-(5). A sixth conduct prong instructs that the
17 dissemination, distribution, or republication of campaign materials applies only if there were a
18 request or suggestion, material involvement, or substantial discussion that took place after the
19 original preparation of the campaign materials that are disseminated, distributed, or republished.
20 See 11 C.F.R. § 109.21(d)(6); Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 439
21 (Jan. 3, 2003).⁴

⁴ The conduct standards of subsections (d)(4) (common vendor) and (d)(5) (former employee or independent contractor) may also apply to such communications. *Id.*

1 The material involvement, substantial discussion, common vendor, and former employee
2 or independent contractor standards of the conduct prong are not satisfied “if the information
3 material to the creation, production, or distribution of the communication was obtained from a
4 publicly available source.” 11 C.F.R. § 109.21(d)(2)-(5); *see* Coordinated Communications, 71
5 Fed. Reg. 33,190, 33,205 (June 8, 2006) (explaining that “[u]nder the new safe harbor, a
6 communication created with information found . . . on a candidate’s or political party’s Web site,
7 or learned from a public campaign speech . . . is not a coordinated communication . . .”). To
8 qualify for the safe harbor for the use of publicly available information, “the person paying for
9 the communication bears the burden of showing that the information used in creating, producing
10 or distributing the communication was obtained from a publicly available source.” 71 Fed. Reg.
11 at 33,205.

12 The available information indicates that ROF purchased the footage from Cold Harbor
13 Films through an arms-length transaction. And there is no information suggesting that Mitt
14 Romney’s 2012 campaign had any knowledge of — much less authorized — the transaction
15 between ROF and Cold Harbor Films. Romney for President, for its part, declines to provide
16 any information, accurately noting that the Complaint has not alleged that it “did anything
17 inappropriate.” Romney for President Resp. at 1.

18 In short, there is nothing in the record showing that the communication at issue was
19 coordinated with the Romney campaign. The Commission therefore finds no reason to believe
20 that Romney for President violated 52 U.S.C. §§ 30116(f) or 30118(a) and closes the file as to
21 Romney for President.

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